IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11046 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISNAGAR TALUKA DHANI GRUH UDYOG SAHAKARI MANDALI LTD.

Versus

NL PANDAR

Appearance:

MR BS PATEL for the Petitioners

MRS HARSHA DEVANI, AGP for the Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/01/2003

ORAL JUDGEMENT

Learned Advocate Mr.B.S.Patel for the petitioner is absent. Heard the learned AGP Mrs.Harsha Devani for the respondents.

The petitioners before this Court are the Cooperative Society and the Chairman thereof. The petitioners have challenged the order dated 6th August, 1994 made by the Registrar of Cooperative Societies, Mehsana, the respondent no.1 herein. Under the impugned order the respondent no.1 has, in exercise of power conferred under Section 107C (i) and 107C (ii), ordered the petitioner no.1 - Society to be wound-up by an interim measure and has ordered appointment of the respondent no.2 as the Liquidator.

The petition was circulated before this Court on 19th September, 1994. The Court (Coram : B.C.Patel, J. as he then was) made order as under :

> "Notice returnable on 23.9.94. In view of para 4 of the memo of petition, it is clear that notice has been issued on 6.5.1994, calling the petitioners to show cause as to why the order of liquidation should not be passed and by an interim order liquidator is also appointed. Yet charge is not taken. Hence the respondents shall explain as to why charge is not taken till this date, inspite of the order and if at the time of receipt of the writ charge is not taken, the same shall not be taken till 23.9.1994."

A further order was made on 5th December, 1994 (Coram : M.R.Calla, J.) as under :

> "No one appears on behalf of the respondents despite service and despite seeking time on 23.9.94 for instructions.
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> Rule. In the meanwhile the interim order shall continue with liberty to the respondents to apply for vacation/modification of the interim order for filing return."

Till the date, neither the respondents have moved the Court for vacation of the interim relief nor the respondents have filed counter affidavit. It is not known whether or not pursuant to the impugned order dated 6th August, 1994 any final order of winding up of the petitioner no.1 - Society was made. It is, therefore, presumed that the impugned interim order of winding-up of the petitioner no.1 - Society and the appointment of the Liquidator has not been acted upon. If the said order has not been acted upon for more than 8 years, it can not now be permitted to be operated. If at all the

winding-up of the petitioner no.1 - Society is necessitated, the same would be required to be examined afresh keeping in view the present position of the said Society. In any view of the matter, the interim order made as far back as on 6th August, 1994 can not now be permitted to be implemented irrespective of the present state-of-affairs of the petitioner no.1 Society.

In above view of the matter, the petition is allowed. The impugned order dated 6th August, 1994 (Annexure-'A' to the petition) is quashed and set aside. Rule is made absolute. There shall be no order as to costs.

It is clarified that this order shall not preclude the respondent authorities from taking any action against the petitioner no.1 - Society including ordering winding-up of the Society, in accordance with law.

(Ms. R.M. Doshit, J.)

/sakkaf